

FCC MAIL ROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 19 8 11 AM '00

In the Matter of

Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996

CC Docket No. 94-129

PT-1 Long Distance, Inc.
PT-1 Counsel Inc.
Joint Petition for Waiver

ORDER**Adopted: September 14, 2000****Released: September 15, 2000**

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant PT-1 Long Distance, Inc. (PT-1 LD) and PT-1 Counsel Inc. (PT-1 COUNSEL) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997). Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); *First Order on Reconsideration*, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PLC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

³ On July 3, PT-1 LD and PT-1 COUNSEL filed a Joint Petition for Limited Waiver of Commission's Rules relating to PT-1 COUNSEL's acquisition of the interexchange customer base of PT-1 LD (Waiver Petition). On September 14, 2000, PT-1 LD and PT-1 COUNSEL filed a Supplement to Joint Petition for Limited Waiver (continued....)

this limited waiver to the extent necessary to enable PT-1 COUNSEL to become the preferred carrier of the consumers currently presubscribed to PT-1 LD, without first obtaining the consumers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. PT-1 LD and PT-1 COUNSEL seek a waiver of our verification rules to allow PT-1 COUNSEL to be designated the preferred long distance carrier for the customers of PT-1 LD without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant PT-1 LD and PT-1 COUNSEL a waiver, subject to the conditions represented in their filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict

(Supplement), which amended the Waiver Petition and provided drafts of the customer notification letters, Exhibits 1 and 2.

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ 47 C.F.R. § 1.3.

⁸ *WAT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹

5. We find that PT-1 LD and PT-1 COUNSEL have demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable PT-1 COUNSEL to transfer to its own customer base the affected PT-1 LD customers. In the Waiver Petition, PT-1 LD and PT-1 COUNSEL state that both PT-1 Communications, Inc. (PT-1 Communications) and its wholly-owned subsidiary, PT-1 LD, are non-dominant carriers that provide international and domestic telecommunications services, primarily prepaid calling card and casual calling services. PT-1 Communications is a wholly-owned subsidiary of STAR, a non-dominant facilities-based and resale carrier that provides domestic and international wholesale and retail telecommunications services.¹² PT-1 Communications provides only prepaid calling services and has no presubscribed customers. While PT-1 LD primarily provides casual calling services, it has a relatively small number of presubscribed customers who were its prior casual calling customers.¹³

6. According to the Waiver Petition, PT-1 COUNSEL is a new telecommunications service provider that intends to provide domestic and international retail communications service over an Internet protocol-based network. PT-1 COUNSEL is a wholly-owned subsidiary of WebToTel, Inc., which is, in turn, a wholly-owned subsidiary of Counsel Communications, LLC. Counsel Communications, LLC is itself a wholly-owned subsidiary of Counsel Corporation, an investment and management company specializing in Internet, communications, and other technology-based enterprises.¹⁴

7. PT-1 LD and PT COUNSEL state that, on February 11, 2000, STAR entered into an agreement with World Access that will permit World Access to acquire 100% of the shares of STAR. As a pre-condition to the STAR-World Access merger, STAR has agreed to sell the assets of PT-1 Communications, including its subsidiary PT-1 LD. Accordingly, on June 6, 2000, STAR and PT-1 Communications entered into a purchase agreement with Counsel Communications, LLC, whereby Counsel will acquire PT-1 Communications from STAR. To facilitate this transaction, PT-1 LD must transfer to PT-1 COUNSEL, among other things, all assets associated with PT-1 LD's telecommunications operations, including its customer base.

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² Waiver Petition at 2-3.

¹³ Supplement at 2.

¹⁴ Waiver Petition at 2.

PT-1 COUNSEL will provide telecommunications services to the former customers of PT-1 LD that are identical to those previously provided by PT-1 LD, and will provide them under the same terms and conditions.¹⁵

8. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former PT-1 LD customers might temporarily be interrupted when PT-1 LD ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; those customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

9. We find that PT-1 LD and PT-1 COUNSEL have demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service or paying significantly higher rates, and because PT-1 LD and PT-1 COUNSEL have agreed to notify the affected customers as described below. PT-1 LD and PT-1 COUNSEL state that they will undertake a two-step process to notify the affected customers of the transfer. In a first letter, PT-1 LD and PT-1 COUNSEL will inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer.¹⁶ PT-1 LD and PT-1 COUNSEL state that they will also advise the affected customers that they can choose a different preferred carrier, should they desire to do so.¹⁷ In addition, customers will be given a toll-free number to call with any questions they may have about the transition. According to PT-1 LD and PT-1 COUNSEL, once the proposed transfer has been consummated, PT-1 LD and PT-1 COUNSEL will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁸ PT-1 LD and PT-1 COUNSEL have agreed that, if the Commission waives its rules to permit PT-1 COUNSEL to provide service to PT-1 LD's former customers, PT-1 LD and PT-1 COUNSEL will work with the complainants and the Commission to investigate and resolve any outstanding customer complaints regarding services provided by PT-1 LD.¹⁹ We conclude that these conditions will adequately protect the rights of the transferred customers of PT-1 LD.

10. For the foregoing reasons, we grant PT-1 LD and PT-1 COUNSEL a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon the provision by PT-1 LD and PT-1 COUNSEL of customer notification and their handling of customer complaints, as described above and further

¹⁵ Waiver Petition at 2-5.

¹⁶ PT-1 LD and PT-1 COUNSEL filed sample notification letters. *See* Supplement, Exhibits 1 and 2 (Notification Letters); Supplement at 2-3.

¹⁷ Supplement at 2.

¹⁸ Notification Letters; Supplement at 2.

¹⁹ Supplement at 2.

detailed in the Waiver Petition and Supplement.

III. ORDERING CLAUSES

11. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the joint waiver request filed by PT-1 Long Distance, Inc. and PT-1 Counsel Inc. on July 3, 2000, and supplemented on September 14, 2000, IS GRANTED to the extent indicated herein.

12. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



K. Michele Walters
Associate Chief,
Accounting Policy Division,
Common Carrier Bureau